

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

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James Douglas Tinsley,)
aka Jimmy Tinsley, Jimmy D Tinsley III,)
James D. Tinsley, II, James Douglas)
Tinsley II,)

Plaintiff,)

v.)

Civil Action No. 7:09-2455-SB

Detective Brian Wight, SCSO;)
Investigator R. Bogan, I-58, SCSO;)
Sheriff Chuck Wright, SCSO, and)
County of Spartanburg, being sued)
in their individual and official capacities,)

Defendants.)

ORDER

This matter is before the Court upon the Plaintiff's pro se complaint, filed pursuant to 42 U.S.C. § 1983. The record contains the report and recommendation ("R&R") of a United States Magistrate Judge, which was made in accordance with 28 U.S.C. § 636(b)(1)(B) and the Local Rules for this district. In the R&R, the Magistrate Judge recommends that the Court dismiss the Plaintiff's complaint without prejudice and without issuance and service of process. Specifically, the Magistrate Judge determined that the Plaintiff's claim about the alleged loss and/or negligent safekeeping of his personal property by Spartanburg County law enforcement officials is not a proper claim under 42 U.S.C. § 1983 because the Plaintiff has an adequate state court remedy under the South Carolina Tort Claims Act.

In his written objections to the R&R, the Plaintiff asserts that the Magistrate Judge misinterpreted his claims and that he is not stating a claim based on the loss or negligent

safekeeping of his property. Rather, the Plaintiff asserts that his claim is based on the Defendants' actual seizure of his property, which he alleges was unconstitutional because it was conducted without a warrant, due process, probable cause, his consent, or the existence of exigent circumstances. In addition to his objections, the Plaintiff filed an affidavit and a motion to amend his complaint.

After a review of the Plaintiff's recent filings, wherein he clarifies his claims against the Defendants, the Court believes that it would be improper to adopt the R&R and dismiss this case without prejudice and without issuance and service of process. Therefore, the Court declines to adopt the R&R at this time and instead remands this matter to the Magistrate Judge for further proceedings in light of the Plaintiff's objections and amended complaint.

Accordingly, it is hereby

ORDERED that the R&R (Entry 9) is not adopted; the Plaintiff's objections (Entry 11) are sustained; the Plaintiff's motion to amend (Entry 14) is granted; and this matter is remanded to the Magistrate Judge for further proceedings.

IT IS SO ORDERED.


The Honorable Spiro Blatz, Jr.
Senior United States District Judge

February 4, 2010
Charleston, South Carolina

